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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,670	08/25/2006	Stephen Cowan	2471.0040000	3798

26111 7590 03/12/2009

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EXAMINER	
DUFFY, DAVID W	
ART UNIT	PAPER NUMBER
3714	
MAIL DATE	DELIVERY MODE
03/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/590,670	COWAN ET AL.	
	Examiner	Art Unit	
	DAVID DUFFY	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-12 and 15-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-12 and 15-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This office action is in response to the amendment filed 08/19/2008 in which applicant amends claims 1, 4-6, 12, 15-17 and 23; and cancels claims 2-3 and 13-14. Claims 1, 4-12 and 15-23 are pending.

Claim Interpretation

2. Applicant's claim 12 includes "means for" or "step for" language which meets the requirements of the test set forth in MPEP § 2181. Examiner is therefore interpreting the claim as having invoked 35 U.S.C. 112, sixth paragraph.

3. Claim 23 includes the word "means" for the first two limitations of the claim, but does not meet the test set forth for invocation of 35 U.S.C. 112 sixth paragraph. "Communication means for communicating" appears to meet the requirements of the test set forth in MPEP § 2181 and is interpreted as invoking 112 sixth paragraph.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 5-6 and 16-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In the specification table 2 the values of Q used vary from -5 to 10 which

would suggest a range encompassing a value of zero, which would provide a discontinuity in the equation due to the dual asymptotic nature of the formula. There is no explanation given of reasonable values or what the range would be to enable one of ordinary skill in the art to determine what values should be used.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 4-12 and 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy; Daniel A. (US 5280909 A) in view of Hagiwara; Takashi (US 4679143 A) and Olsen; Eric Burton (US 6210275 B1).

8. In regards to claims 1, 4, 7-9, 12, 15, 18-20 and 23, Tracy discloses a method of allocating a player's contribution in a gaming apparatus between a first game provided at a gaming machine having a designed return to player and a second linked game, the method comprising: a) receiving a contribution from a player by input means (4:11-13); and b) allocating a part of the contribution to the second game in accordance with a predetermined ratio (5:12-20) where the system includes communication means between the progressive controller and the gaming machines (fig1, elements 8A-8D). Tracy does not disclose c) measuring an actual return to player of the gaming machine; and d) modifying the predetermined ratio to determine a modified ratio as a function of the actual return to player.

9. In related prior art, Hagiwara discloses a gaming machine that adjusts the payout schedule with respect to the measured return to the player (1:55-2:20) via control

means (fig 2, element 4) where the adjustment is made periodically in real time in response to payouts (fig 3). One of ordinary skill in the art would recognize the advantages taught by such a system to provide a high payout incentive to the player when possible while protecting the game operator from a loss.

10. Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified Tracy in view of Hagiwara to have monitored the actual payout rate and modified the payout to the player periodically in real time in response to the payouts made in order to provide an award incentive while protecting the game operator from loss.

11. The combination made does not explicitly disclose that the ratio of contribution would be modified to adjust the payout.

12. In related prior art, Olsen teaches that in a progressive system such as that used by Tracy, altering the contribution to the progressive pool controls the frequency of bonus awards without affecting pay tables (14:15-18); where one of ordinary skill in the art would recognize that increasing the contribution would increase the frequency of awards and vice versa in a proportional manner. One of ordinary skill in the art would recognize the advantages of altering the progressive contribution to adjust awards while not affecting pay tables in order to provide variable award amounts without changing the pay tables.

13. Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified the combination of Tracy and Hagiwara in view of Olsen to have modified the contribution percentage to adjust awards so that the pay tables would

not need to be changed while still providing for control over the payout of the gaming system.

14. In regards to claims 5-6 and 16-17, the combination made discloses the method according to claim 1, but does not explicitly disclose in which the modified ratio I_n is determined in accordance with the formula $I_n = I_{n-1} + [(RTP - P/T)/Q]$ where RTP is the designed performance, T is an amount of total revenue, P is an amount of total prizes and Q is a control variable or in which the modified ratio I_n is determined in accordance with the formula $I_n = I_o + [(RTP - P/T)/Q]$ where I_o is the base ratio, RTP is the designed performance, T is an amount of total revenue, P is an amount of total prizes and Q is a control variable. However, it would be a matter of obvious design choice as to the specific formula to use to determine the percentage used as applicant states that the formula may be interchanged with any other well known smoothing formula (specification pg 11:16-19).

15. In regards to claims 10-11 and 21-22, Tracy discloses the method according to claim 1 in which the predetermined ratio is modified within an upper and a lower limit (6:12-13).

Response to Arguments

16. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's arguments for claims 5-6 and 16-17 rejected under 35 U.S.C. 112 are not persuasive. Applicant does not set forth acceptable ranges or procedures to determine what is acceptable for implementation of the system. As the disclosed range

of values for Q would reasonably include the discontinuity at zero in addition to the divergent asymptotic function as Q approaches zero it is unclear from the disclosure how one of ordinary skill in the art would make and use the invention.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID DUFFY whose telephone number is (571) 272-1574. The examiner can normally be reached on M-F 0830-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. D./
Examiner, Art Unit 3714

/Corbett Coburn/
Primary Examiner
AU 3714